UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: The Newtown Creek Superfund Site Kings County and Queens County, New York City, New York	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR FOCUSED FEASIBILITY STUDY
The City of New York, Respondent.	U.S. EPA Region 2 CERCLA Docket No. CERCLA-02-2018-2020 Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622.

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR FOCUSED FEASIBILITY STUDY

TABLE OF CONTENTS

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR FOCUSED FEASIBILITY STUDY

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the City of New York ("Respondent"). This Settlement Agreement concerns the preparation and performance of a focused feasibility study ("FFS") by Respondent for operable unit number 2 ("OU2"), which effort consists of evaluating the impact of current and reasonably anticipated future discharges of CERCLA hazardous substances from combined sewer overflows ("CSOs") to the Newtown Creek study area portion of the Newtown Creek Superfund Site (the "Study Area"). Pursuant to separate administrative orders issued by the New York State Department of Environmental Conservation under the Clean Water Act, Respondent has independently committed to reduce CSO discharges to the Study Area through implementation of its approved Long Term Control Plan ("Newtown Creek LTCP"). The Study Area includes a facility encompassing the body of water known as Newtown Creek, which is situated at the border of the boroughs of Brooklyn (Kings County) and Queens (Queens County) in the City of New York, State of New York, as further defined herein. This Settlement Agreement also concerns the payment by Respondent of Future Response Costs, as defined herein.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division by Region 2 Redelegation R-1200 dated January 29, 2017.

3. Other than implementing the Focused Feasibility Study Work Plan ("FFS Work Plan") activities that are required to be performed by Respondent pursuant to this Settlement Agreement, and except to the extent otherwise provided in Paragraphs 42 or 47 of this Settlement Agreement, Respondent is not required by the terms of this Settlement Agreement to fund or perform any remedial or removal actions selected by EPA for the Study Area or the Site. Any remedial or removal actions selected for the Study Area or the Site may be the subject of a future settlement between EPA, Respondent, and/or other persons not a party to this Settlement Agreement or may otherwise be the subject of separate enforcement actions by EPA.

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and it

retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law and determinations in Sections V and VI of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms in any action to enforce its provisions.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in municipal status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent is liable for carrying out all activities required under this Settlement Agreement. It is intended that Respondent shall perform all of the Work and pay Future Response Costs under this Settlement Agreement.

7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement by Respondent, its contractors, subcontractors, or representatives.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of EPA and Respondent are to:

a. Summarize the nature and extent of hazardous substances released and anticipated to be released to the Study Area from CSO discharges under current and reasonably anticipated future flow conditions as identified in the Combined Sewer Overflow Long Term Control Plan for Newtown Creek approved by NYSDEC by letter dated June 27, 2018 and as supplemented, pursuant to NYSDEC's direction, on July 31, 2018 (LTCP). For assessing the future chemical loadings from CSO discharges, the chemical concentrations measured pursuant to the RIFS conducted under the 2011 AOC will be used.
b. Evaluate the impacts of current and reasonably anticipated future releases of hazardous substances from CSOs to Newtown Creek. Impacts include those to human health and/or the environment. The impacts will be assessed using multiple lines of evidence, such as comparison of the measured concentrations of hazardous substances released from CSOs to background concentrations, and

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2

IN THE MATTER OF: The Newtown Creek Superfund Site Kings County and Queens County, New York City, New York	ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR FOCUSED FEASIBILITY STUDY
The City of New York, Respondent.	U.S. EPA Region 2 CERCLA Docket No. CERCLA-02-2018-2020 Proceeding Under Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622.

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR FOCUSED FEASIBILITY STUDY

TABLE OF CONTENTS

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR FOCUSED FEASIBILITY STUDY

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and the City of New York ("Respondent"). This Settlement Agreement concerns the preparation and performance of a focused feasibility study ("FFS") by Respondent for operable unit number 2 ("OU2"), which effort consists of evaluating the impact of current and reasonably anticipated future discharges of CERCLA hazardous substances from combined sewer overflows ("CSOs") to the Newtown Creek study area portion of the Newtown Creek Superfund Site (the "Study Area"). Pursuant to separate administrative orders issued by the New York State Department of Environmental Conservation under the Clean Water Act, Respondent has independently committed to reduce CSO discharges to the Study Area through implementation of its approved Long Term Control Plan ("Newtown Creek LTCP"). The Study Area includes a facility encompassing the body of water known as Newtown Creek, which is situated at the border of the boroughs of Brooklyn (Kings County) and Queens (Queens County) in the City of New York, State of New York, as further defined herein. This Settlement Agreement also concerns the payment by Respondent of Future Response Costs, as defined herein.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9604, 9607 and 9622 ("CERCLA"). This authority was delegated to the Administrator of EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2926 (Jan. 29, 1987), and further delegated to Regional Administrators on May 11, 1994, by EPA Delegation Nos. 14-14-C and 14-14-D. This authority was further redelegated by the Regional Administrator of EPA Region 2 to the Director of the Emergency and Remedial Response Division by Region 2 Redelegation R-1200 dated January 29, 2017.

3. Other than implementing the Focused Feasibility Study Work Plan ("FFS Work Plan") activities that are required to be performed by Respondent pursuant to this Settlement Agreement, and except to the extent otherwise provided in Paragraphs 42 or 47 of this Settlement Agreement, Respondent is not required by the terms of this Settlement Agreement to fund or perform any remedial or removal actions selected by EPA for the Study Area or the Site. Any remedial or removal actions selected for the Study Area or the Site may be the subject of a future settlement between EPA, Respondent, and/or other persons not a party to this Settlement Agreement or may otherwise be the subject of separate enforcement actions by EPA.

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and it

retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of fact, conclusions of law and determinations in Sections V and VI of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms in any action to enforce its provisions.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and its successors and assigns. Any change in municipal status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent is liable for carrying out all activities required under this Settlement Agreement. It is intended that Respondent shall perform all of the Work and pay Future Response Costs under this Settlement Agreement.

7. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement by Respondent, its contractors, subcontractors, or representatives.

8. The undersigned representative of Respondent certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind Respondent to this Settlement Agreement.

III. STATEMENT OF PURPOSE

9. In entering into this Settlement Agreement, the objectives of EPA and Respondent are to:

a. Summarize the nature and extent of hazardous substances released and anticipated to be released to the Study Area from CSO discharges under current and reasonably anticipated future flow conditions as identified in the Combined Sewer Overflow Long Term Control Plan for Newtown Creek approved by NYSDEC by letter dated June 27, 2018 and as supplemented, pursuant to NYSDEC's direction, on July 31, 2018 (LTCP). For assessing the future chemical loadings from CSO discharges, the chemical concentrations measured pursuant to the RIFS conducted under the 2011 AOC will be used.

b. Evaluate the impacts of current and reasonably anticipated future releases of hazardous substances from CSOs to Newtown Creek. Impacts include those to human health and/or the environment. The impacts will be assessed using multiple lines of evidence, such as comparison of the measured concentrations of hazardous substances released from CSOs to background concentrations, and

comparison of the estimated loading of hazardous substances from CSO releases to loadings from other sources. It is anticipated that modeling will be used to assist in assessing these impacts.

c. Develop and evaluate alternatives to address any current and reasonably anticipated future impacts of hazardous substances released through CSO discharges on the Study Area under flow conditions identified in the LTCP, and develop the documentation required to support the selection of an alternative in a Record of Decision for OU2 of the Site.

10. The Work conducted under this Settlement Agreement is subject to approval by EPA and shall provide all appropriate and necessary information to evaluate alternatives to the extent necessary to select a remedy that will be consistent with CERCLA and the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300 ("NCP"). Respondent shall conduct all Work under this Settlement Agreement in compliance with CERCLA, the NCP, and all applicable EPA guidance, policies, and procedures, including, without limitation, EPA Region 2's "Clean and Green Policy" which may be found at: http://www.epa.gov/region02/superfund/green_remediation.

IV. DEFINITIONS

11. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "2011 AOC" shall mean the Administrative Settlement Agreement and Order on Consent for Remedial Investigation and Feasibility Study (U.S. EPA Region 2 CERCLA Docket No. CERCLA-02-2011-2011) issued by EPA in July 2011 to Respondent, Phelps Dodge Refining Corporation, Texaco, Inc., BP Products North America Inc., The Brooklyn Union Gas Company d/b/a National Grid NY, and ExxonMobil Oil Corporation, and requiring the respondents to that order to perform, under EPA oversight, a remedial investigation and feasibility study for the Study Area.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*

c. "Clean Water Act" or "CWA" shall mean the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, *et seq.*

d. "Combined sewer overflow" or "CSO" shall mean the discharge of excess, untreated wastewater from the combined sewer system during heavy rainfall events when combined sewage volume exceeds the treatment capacity of a related waste water treatment facility or its related collection system.

e. "Day" shall mean a calendar day. In computing any period under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next Working Day.

f. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXXI.

g. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

h. "Focused Feasibility Study Work Plan" or "FFS Work Plan" shall mean an EPA-approved Newtown Creek Combined Sewer Overflow Focused Feasibility Study Work Plan to be developed consistent with the Statement of Work, attached hereto as Appendix B, which will result in the creation and submission of a focused feasibility study report, for EPA approval. The FFS Work Plan may be modified in a manner consistent with the FFS Work Plan and/or this Settlement Agreement. Upon EPA approval thereof, the FFS Work Plan shall be deemed incorporated as an enforceable part of this Settlement Agreement.

i. "Future Response Costs" shall mean all costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other deliverables pursuant to this Settlement Agreement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, Agency for Toxic Substances and Disease Registry ("ATSDR") costs if any, the costs incurred pursuant to Paragraph 61.a. (including, but not limited to, costs and attorneys fees and any monies paid to secure access, including, but not limited to, the amount of just compensation), Paragraph 47 (Emergency Response), and Paragraph 89 (Work Takeover).

j. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

k. "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

l. "Newtown Creek" shall mean Newtown Creek proper and its five branches (or tributaries) known as Dutch Kills, Maspeth Creek, Whale Creek, East Branch, and English Kills, unless a tributary is specifically indicated, as well as the sediments below the water, and the water column above the sediments. Newtown Creek is located in Kings County and Queens County in the City and State of New York, roughly centered at the geographic coordinates of 40° 42' 54.69" north latitude (40.715192°) and 73° 55' 50.74 74" west longitude (73.930762°). Newtown Creek is a tidal arm of the New York-New Jersey Harbor Estuary and forms a

portion of the northern border of the borough of Brooklyn (Kings County) and the southern border of the borough of Queens (Queens County).

m. "Newtown Creek Long Term Control Plan" or "Newtown Creek LTCP" shall mean the plan developed by Respondent pursuant to CSO orders on consent between Respondent and the New York State Department of Environmental Conservation ("NYSDEC"), to control combined sewer overflow to Newtown Creek to achieve waterbody-specific water quality standards, under the Clean Water Act, consistent with the Federal CSO Control Policy and related guidance, which plan was approved by NYSDEC by letter dated June 27, 2018 and as supplemented, pursuant to NYSDEC's direction, on July 31, 2018.

n. "Newtown Creek Special Account" shall mean the special account within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3), and the 2011 AOC.

o. "Newtown Creek Superfund Site" or "Site" shall mean the Study Area and the areal extent of the contamination associated with the Study Area, including facilities upland of the Study Area that are sources of contamination to the Study Area.

p. "NYSDEC" shall mean the New York State Department of Environmental Conservation, a New York State agency with an approved program under, inter alia, Sections 318, 402, and 405 of the Clean Water Act, and any successor departments or agencies of the State.

q. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or an upper case or lower-case letter.

r. "Parties" shall mean EPA and Respondent.

s. "RCRA" shall mean the Resource Conservation and Recovery Act, also known as the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.*

t. "Respondent" shall mean the City of New York, including, without limitation, the New York City Department of Environmental Protection and each other agency and sub-agency with jurisdiction or responsibility for New York City sewer infrastructure.

u. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

v. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, including the Statement of Work, and any other appendix attached hereto (listed in Section XXIX) and all documents incorporated by reference into this document, including, without limitation, EPA-approved submissions. EPA-approved submissions (other than progress reports) are incorporated into and become a part of this Settlement Agreement upon approval by EPA. In the event of conflict between this Settlement Agreement and any appendix or other incorporated documents, this Settlement Agreement shall control.

w. "Statement of Work" or "SOW" shall mean the document describing the activities Respondent must perform to develop the FFS for OU 2 for the Site, as set forth in Appendix B to this Settlement Agreement. The Statement of Work is incorporated

into this Settlement Agreement and is an enforceable part of this Settlement Agreement, as are any modifications made thereto in accordance with this Settlement Agreement.

x. "Study Area" shall mean the portion of the Site that encompasses Newtown Creek, including the sediments below the waters of Newtown Creek, and the water column above the sediments, up to and including the landward edge of the shoreline, and including also any bulkheads or riprap containing the water body, except where no bulkhead or riprap exists, in which case the Study Area shall extend to the ordinary high water mark, as defined in 33 C.F.R. Section 328.3(e), of Newtown Creek, and the areal extent of the contamination from such area, but not including upland areas beyond the landward edge of the shoreline (notwithstanding that such upland areas may subsequently be identified as sources of contamination to the water body and its sediments or that such upland areas may be included within the scope of the Site as listed pursuant to Section 105(a)(8) of CERCLA). The Study Area is depicted generally on the map attached as Appendix A.

y. "State" shall mean the State of New York.

z. "United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

aa. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

bb. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement, except those required by Section XIV (Retention of Records).

cc. "Working Day" shall mean any day of the week excluding Saturdays, Sundays and federal holidays as defined at 5 U.S.C. § 6103.

V. FINDINGS OF FACT

12. The Site includes Newtown Creek, a body of water located in Kings and Queens Counties in the City of New York. Historically, Newtown Creek drained the uplands of western Long Island and flowed through wetlands and marshes. However, because of heavy industrial development and governmental activities dating from the 1800's, formerly wet areas have been filled, Newtown Creek has been channelized, and its banks have been stabilized with bulkheads and rip rap. The historic development has resulted in changes in the nature of Newtown Creek from a natural drainage condition to one that is governed largely by engineered and institutional systems.

13. The area around Newtown Creek has a history of extensive industrial development dating back to the 1800's. By the 1850's, the area surrounding and adjacent to Newtown Creek had become highly industrialized. By 1870, more than 50 petroleum refineries were located along its banks, and by the close of the 19th century, the Creek was lined with oil refineries and

petrochemical plants, fertilizer and glue factories, copper-smelting and fat-rendering plants, shipbuilders, sugar refineries, hide tanning plants, canneries, governmental facilities, sawmills, paint works, and lumber and coal yards. During its industrial past, Newtown Creek was crowded with commercial vessels, including large boats bringing in raw materials and fuel and taking out oil, fat, varnish, chemicals, and metals.

14. Currently, the predominant land use around Newtown Creek (with the exception of a small area near the mouth which is zoned for residential use), includes light industrial facilities, petroleum bulk storage facilities, recycling facilities including for asphalt, metals and construction and demolition waste, manufacturing facilities, warehouses, transportation and transportation infrastructure including rail and highways, utility facilities, and municipal facilities which include a large municipal Water Pollution Control Plant. The majority of the upland area bordering Newtown Creek is within one of three Industrial Business Zones of the City of New York, and the majority of Newtown Creek has also been designated by the City of New York as one of the City's six Significant Maritime and Industrial Areas.

15. The majority of the shoreline area of Newtown Creek is currently zoned for heavy manufacturing and industrial use. A portion, near the mouth of the Creek, is zoned for residential use.

16. The exodus of heavy industry from New York City, the enactment and enforcement of the CWA (including Respondent's obligation to develop and implement ten watershed based long term control plans and an additional long term control plan for the open waters of New York City, including the East River), and other federal, State and City environmental laws and regulations, have led to a reduction in discharges of hazardous substances, pollutants, and contaminants into the waters of New York City, including the Study Area.

17. As part of its municipal operations, Respondent collects combined domestic sewage, industrial sewage, and storm water from roads and other paved and unpaved areas (i.e., "combined sewage") and provides for treatment of combined sewage, including at the Newtown Creek Wastewater Treatment Plant ("WWTP"), before the discharge of the treated effluent into the City's waterbodies, including Newtown Creek. Respondent also collects combined sewage in the Bowery Bay Drainage Basin for treatment in the Bowery Bay WWTP before discharge of treated effluent into City waterbodies other than Newtown Creek. Generally, such combined sewage includes hazardous substances that flow into the sewer system from sewer connections or street runoff. In accordance with the City's Clean Water Act permits for the Newtown Creek WWTP and the Bowery Bay WWTP, during periods of heavy rainfall, when combined sewage exceeds the treatment capacity of the Newtown Creek WWTP, or the Bowery Bay WWTP, or exceeds the capacity of the related collection system, regulators divert the flow of combined sewage to CSO outfalls, resulting in the discharge of untreated wastewater as CSO to waterbodies including Newtown Creek.

18. Pursuant to administrative orders on consent issued by NYSDEC to Respondent under the CWA ("CWA consent orders"), Respondent is required to develop and implement long term

control plans to reduce the discharges of pollutants, as defined in the CWA, from various point sources in the City, which includes CSO discharges into waters of the State of New York in New York City, including Newtown Creek.

19. Pursuant to the CWA consent orders, the City has prepared, and NYSDEC has approved, the Newtown Creek LTCP to reduce CSO discharges to Newtown Creek. Respondent has advised EPA that implementation of the Newtown Creek LTCP would reduce CSO discharges to Newtown Creek by an estimated 711-million gallons of CSO per year from the four largest CSO outfalls to Newtown Creek, or a reduction of approximately 62.5% from the current baseline of 1,161-million gallons per year of CSO discharges to Newtown Creek. The Newtown Creek LTCP includes an approximately 39-million gallon wastewater storage tunnel addressing three of the four largest (by volume) CSO point sources in Newtown Creek by storing that amount of combined sewage in the storage tunnel until releasing it to the WWTP after a rain event, when the Newtown Creek WWTP has restored capacity to treat such combined sewage, as well as by expansion of a pumping station at the fourth largest (by volume) CSO point source in Newtown Creek. Respondent has estimated the net present worth cost of implementation of these measures at approximately $1.385 billion.

20. Generally, domestic and industrial combined sewage discharged to the Study Area contains hazardous substances, including polycyclic aromatic hydrocarbons ("PAHs"), polychlorinated biphenyls ("PCBs"), and copper. The Newtown Creek LTCP, by abating CSO discharges to Newtown Creek for purposes of the CWA, will also abate releases of hazardous substances, pollutants, and contaminants for purposes of CERCLA.

21. EPA conducted an Expanded Site Investigation of Newtown Creek in 2009 as part of CERCLA's Hazard Ranking System scoring process. Based on this investigation, which was focused on Newtown Creek itself and not its tributaries, EPA concluded that metals including copper, volatile organic compounds, and semi-volatile organic compounds (including PCBs and PAHs) were present in Creek sediments at concentrations above levels in nearby locations in the Atlantic basin. The variety and distribution of the detected constituents suggests that they originated from a variety of sources, including combined sewage overflow.

22. Potential sources of hazardous substances to Newtown Creek include a wide range of current and historical industrial and municipal discharges, including the following: (a) historic and ongoing industrial discharges from industries along the banks and within the Newtown Creek watershed, (b) incidental releases or other discharges during loading or unloading of barges servicing Creekside industrial or governmental facilities, (c) historic placement of fill by both industry and municipalities along the banks of Newtown Creek for disposal or for filling marshland or swamps, (d) historic placement of dredge material during dredging and channelization activities, (e) historic discharge of sanitary sewage and industrial wastes, (f) historic and ongoing releases of combined storm, sanitary, and industrial discharges through combined sewage overflow systems into Newtown Creek, and (g) releases from navigational shipping and maritime traffic.

23. As provided by Part 701 of the New York Code of Rules and Regulations, the water in Newtown Creek is currently classified by the NYSDEC as Class SD saline surface water. Such regulations further provide (a) that "discharge of sewage, industrial waste, or other wastes shall not cause impairment of the best usages of the receiving water as specified by the water classification", (b) that the best usage of Class SD waters is fishing, and (c) that "these waters shall be suitable for fish, shellfish and wildlife survival. In addition, the water quality shall be suitable for primary and secondary contact recreation, although other factors may limit the use for these purposes." This classification may be given to "waters that, because of natural or manmade conditions, cannot meet the requirements for fish propagation." The Creek does not presently meet parameters for the CWA protected use of fishing, because of, e.g., low dissolved oxygen. Current recreational uses of the Newtown Creek include kayaking, and there are existing and planned waterfront access points. Human exposure to contaminated sediments and waters of Newtown Creek through recreational use, use of the shoreline areas by workers, residents, recreationists, or trespassers or through consumption of fish or other biota impacted by contamination associated with Newtown Creek could cause adverse health effects. The Baseline Human Health Risk Assessment has resulted in a determination that consuming fish and crabs from Newtown Creek may cause adverse human health effects in excess of EPA's acceptable risk range. A Baseline Ecological Risk Assessment was also developed pursuant to the 2011 AOC to evaluate the effects of exposure to site-related contaminants on flora and fauna at the Study Area. That assessment indicates that contaminants present in the Study Area are toxic to and/or may cause adverse effects upon receptors, including benthic macroinvertebrates, animals such as birds and mammals that eat benthic macroinvertebrates, and fish.

24. The Site (which includes the Study Area) was proposed for inclusion on the National Priorities List pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, on September 23, 2009, by publication in the Federal Register at 74 Federal Register 48511, and the Site was added to the List by rule published in the Federal Register on September 29, 2010, at 75 Federal Register 59983.

25. Respondent has owned and operated and currently owns and operates the facilities encompassing Respondent's sewage infrastructure that currently conveys and discharges combined sewage overflow containing hazardous substances to the Study Area. Hazardous substances of the type released from such facilities have been identified in the sediments of Newtown Creek.

VI. CONCLUSIONS OF LAW AND DETERMINATIONS

26. The Study Area is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

27. The contamination found at the Study Area, as identified in the Findings of Fact, above, includes "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

28. The conditions described in the Findings of Fact, above, constitute an actual and/or threatened "release" of a hazardous substance from a facility as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

29. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

30. Respondent is a person that currently, or at the time of disposal of hazardous substances, owned or operated facilities within the Site, or is a person that arranged for disposal of hazardous substances at the Site.

31. Respondent therefore is a responsible party for the purposes of Sections 104, 107, and 122 of CERCLA, 42 U.S.C. §§ 9604, 9607, and 9622.

32. The actions required by this Settlement Agreement are necessary to protect the public health, welfare, and/or the environment, are in the public interest, are consistent with CERCLA and the NCP, and will expedite effective remedial action and minimize litigation.

33. EPA has determined that Respondent is qualified to conduct the FFS within the meaning of Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), and will carry out the Work properly and promptly, in accordance with Sections 104(a) and 122(a) of CERCLA, 42 U.S.C. §§ 9604(a) and 9622(a), if Respondent complies with the terms of this Settlement Agreement.

VII. SETTLEMENT AGREEMENT AND ORDER

34. Based upon the foregoing Findings of Fact and Conclusions of Law and Determinations, it is hereby ordered and agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all appendices to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VIII. DESIGNATION OF CONTRACTORS AND PROJECT COORDINATORS

35. Selection of Contractors, Personnel. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Respondent has identified, and EPA approves, Louis Berger, P.C. as its contractor for the performance of the Work. If Respondent wishes to change its designated contractor during the performance of the Work, it shall submit to EPA for approval the name and qualifications of a new, proposed designated contractor and of the key personnel, including subcontractors, consultants, and laboratories, to be used in carrying out such Work prior to dismissing the designated contractor. With respect to any new proposed contractor, Respondent shall demonstrate that that proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The

QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 (Reissued May 2006)) or equivalent documentation as determined by EPA. The qualifications of the key personnel undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. If EPA disapproves in writing of any key person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement(s) within 14 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete FFS, and to seek reimbursement for costs and penalties from Respondent. During the course of the FFS, Respondent shall notify EPA in writing of any changes or additions to the key personnel used to carry out such Work, providing their names, titles, and qualifications. EPA shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification of identified personnel by Respondent.

36. Respondent's Project Coordinator and Alternate Project Coordinator. Respondent has identified and EPA approves Ron Weissbard as its Project Coordinator. Respondent has identified and EPA approves Dabeiba Marulanda as its Alternate Project Coordinator (for instances when the Project Coordinator is unavailable). The Project Coordinator shall be responsible for administration of all actions by Respondent required under this Settlement Agreement. If Respondent wishes to change its Project Coordinator or Alternate Project Coordinator, it shall submit to EPA the name, address, telephone number, and qualifications of a new, proposed Project Coordinator and/or Alternate Project Coordinator for approval prior to dismissing the Project Coordinator and/or Alternate Project Coordinator. The proposed Project Coordinator and Alternate Project Coordinator shall not be an attorney for Respondent. EPA retains the right to disapprove of the proposed Project Coordinator or Alternate Project Coordinator. If EPA disapproves of a proposed Project Coordinator or Alternate Project Coordinator, Respondent shall submit to EPA for approval a different proposed Project Coordinator or Alternate Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 14 days following EPA's disapproval. After approval, receipt by Respondent's Project Coordinator or Alternate Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

37. EPA has designated the following individuals as its Project Coordinators for the Site:

Caroline Kwan
Remedial Project Manager
Special Projects Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866
212-637-4275
kwan.caroline@epa.gov

Mark Schmidt
Remedial Project Manager
Special Projects Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866
212-637-3886
schmidt.mark@epa.gov

Anne Rosenblatt
Remedial Project Manager
Special Projects Branch
Emergency and Remedial Response Division
United States Environmental Protection Agency, Region 2
290 Broadway, 20th Floor
New York, NY 10007-1866
212-637-4275
rosenblatt.anne@epa.gov

EPA will notify Respondent of changes of its designated Project Coordinators.

38. EPA's Project Coordinators shall have the authority lawfully vested in a Remedial Project Manager ("RPM") and On-Scene Coordinator ("OSC") by the NCP. In addition, EPA's Project Coordinators shall have the authority, consistent with the NCP, to halt any Work required by this Settlement Agreement, and to take any necessary response action when she/he determines that conditions at the Study Area may present an immediate endangerment to public health or welfare or the environment. The absence of the EPA Project Coordinators from the area under study pursuant to this Settlement Agreement shall not be cause for the stoppage or delay of Work.

39. EPA shall arrange for a qualified person to assist in its oversight and review of the conduct of the FFS, as required by Section 104(a) of CERCLA, 42 U.S.C. § 9604(a). Such person shall have the authority to observe Work and make inquiries in the absence of EPA, but not to modify the FFS Work Plan.

IX. WORK TO BE PERFORMED

40. Respondent shall conduct the FFS in accordance with the provisions of this Settlement Agreement, the attached Statement of Work, CERCLA, the NCP, and EPA guidance, including, to the extent applicable, "Interim Final Guidance for Conducting Remedial Investigations and Feasibility Studies under CERCLA" (OSWER Directive # 9355.3-01, October 1988 or subsequently issued guidance), "Guidance for Data Usability in Risk Assessment" (OSWER Directive #9285.7-05, October 1990, or subsequently issued guidance), "EPA Contaminated

Sediment Guidance" (OSWER Directive #9355.0-85, December 2005, or subsequently issued guidance), and guidance referenced therein, and guidance referenced in the Statement of Work, as may be amended or modified by EPA. During the FFS, EPA shall determine and evaluate (based on treatability testing, where appropriate) potential alternatives for remedial action, as necessary, to prevent, mitigate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants at or from the Study Area. In evaluating any alternatives, Respondent shall address the factors required to be taken into account by Section 121 of CERCLA, 42 U.S.C. § 9621, and Section 300.430(e) of the NCP, 40 C.F.R. § 300.430(e).

41. All written documents prepared by Respondent pursuant to this Settlement shall be submitted by Respondent in accordance with Section X (EPA Approval of Plans and Other Submissions) with the exception of progress reports and the Health and Safety Plan. All such submittals will be reviewed and approved by EPA in accordance with Section X (EPA Approval of Plans and Other Submissions). Respondent shall implement all EPA-approved, conditionally-approved, or modified deliverables.

42. Submission and Modification of the FFS Work Plan.

a. Within thirty days of the Effective Date, Respondent shall submit to EPA, for review and approval, a draft FFS Work Plan substantively consistent with the SOW.

b. If at any time during the FFS process, Respondent identifies a need for modifications to the EPA-approved FFS Work Plan, Respondent shall submit a memorandum documenting the need for proposed modifications to an EPA Project Coordinator within ten days of identification. In addition, if at any time during the FFS process, Respondent identifies a need for additional data, Respondent shall submit a memorandum documenting the basis for a need for additional data to the EPA Project Coordinator within ten days of identification. EPA in its discretion will determine whether the additional data is necessary to be collected by Respondent for this FFS and whether such data will be incorporated into plans, reports and other deliverables for this FFS. Notwithstanding the foregoing, Respondent retains the right to collect and submit data for any other purpose.

c. In the event of significant unanticipated or changed circumstances at the Study Area affecting the Work, Respondent shall notify an EPA Project Coordinator by telephone within 24 hours of discovery of the unanticipated or changed circumstances. In the event that EPA determines that the unanticipated or changed circumstances warrant changes in the FFS Work Plan, EPA will notify Respondent in writing of the need to modify the FFS Work Plan or amend the FFS Work Plan itself, accordingly. Respondent shall perform the FFS Work Plan as modified or amended.

d. EPA may determine that in addition to tasks defined in the initially approved FFS Work Plan, other additional Work may be necessary to accomplish the objectives of the FFS consistent with CERCLA and the NCP, and EPA will provide

Respondent with an explanation of any such determination in writing. Subject to an objection as set forth below in Paragraph 42(e), Respondent agrees to perform these Work activities related to the FFS in addition to those required by the initially approved FFS Work Plan, including any modifications approved by EPA, if EPA determines that such actions are necessary for a complete FFS.

e. Respondent shall confirm its willingness to perform the additional Work in writing to EPA within 15 days of receipt of the EPA request. If Respondent objects to any modification determined by EPA to be necessary pursuant to this Paragraph, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). The FFS Work Plan shall be modified in accordance with the final resolution of the dispute.

f. Respondent shall complete the additional Work according to the standards, specifications, and schedule set forth or approved by EPA in a written modification to the FFS Work Plan or written FFS Work Plan supplement, consistent with the outcome of any dispute raised pursuant to Section XV. EPA reserves the right to conduct the Work itself at any point, to seek reimbursement from Respondent, and/or to seek any other appropriate relief.

g. Nothing in this Paragraph shall be construed to limit EPA's authority, in separate enforcement actions, to require performance of further response actions at the Study Area or the Site.

43. Off-Site Shipment of Waste Material. Respondent shall, prior to any off-site shipment of any Waste Material from the Study Area to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to an EPA designated Project Coordinator. However, this notification requirement shall not apply to any off-site shipments when the total volume of all such shipments does not exceed 10 cubic yards.

a. Respondent shall include in the written notification the following information: (1) the name and location of the facility to which the Waste Material is to be shipped; (2) the type and quantity of the Waste Material to be shipped; (3) the expected schedule for the shipment of the Waste Material; and (4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state or to a facility in another state.

b. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the FFS. Respondent shall provide the information required by Paragraphs 43.a and 43.c as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

c. Before shipping any hazardous substances, pollutants, or contaminants from the Study Area to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants,

or contaminants from the Study Area to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

44. Meetings. Respondent shall make presentations at, and participate in, meetings as requested by EPA during the initiation, conduct, and completion of the FFS. In addition to discussion of the technical aspects of and substantive issues relating to the FFS, topics may include anticipated problems or new issues. Meetings will be scheduled at EPA's discretion. Respondent may also request such meetings.

45. Progress Reports. In addition to the other deliverables set forth in the this Settlement Agreement, the Respondent shall provide written monthly progress reports to EPA with respect to actions and activities undertaken pursuant to the this Settlement Agreement. The progress reports shall be submitted on or before the tenth day of each month following the effective date of this Settlement Agreement. The Respondent's obligation to submit progress reports continues until EPA gives the Respondent written notice that it may cease submitting the progress reports as set forth under this Settlement Agreement. At a minimum, these progress reports shall include the following:

d. A description of all actions which have been taken toward achieving compliance with this Settlement Agreement during the prior month

e. A description of any violations of this Settlement Agreement and other problems encountered during the month;

f. A description of all corrective actions taken in response to any violations or problems which occurred during the prior month;

g. A description of all activities and submittals planned for the following two months;

h. Identification of all data collected or received by Respondent during the prior month;

i. A description of all plans, actions, and data scheduled;

j. An estimate of percentage of the Work required by this Settlement Agreement that has been completed as of the date of the progress report;

k. An identification of all delays encountered or anticipated that may affect the future schedule for performance of the Work, and all efforts made by Respondent to mitigate delays or anticipated delays; and

l. A description of all communications that the Respondent has had with state, or federal authorities related to the Work.

46. Respondent shall submit copies of all plans, reports, or other submissions required pursuant to this Settlement Agreement as set forth below. Upon request by EPA, Respondent shall submit in electronic form all portions of any plan, report or other deliverable Respondent is required to submit pursuant to provisions of this Settlement Agreement. Any electronic submissions must be in a format that is compatible with EPA software and in database files and sizes to be specified by EPA. Reports should be submitted to the following:

a. Four copies (2 bound, 1 unbound and 1 electronic) to:

United States Environmental Protection Agency, Region 2
Emergency and Remedial Response Division
Special Projects Branch: Newtown Creek Superfund Site
290 Broadway, 20th Floor
New York, NY 10007-1866
Attention: Newtown Creek Superfund Site Remedial Project Manager

b. One copy (bound), to:

Chief, New York/Caribbean Superfund Branch
Office of Regional Counsel
United States Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Attention: Newtown Creek Superfund Site Attorney

c. Three copies (2 unbound, 1 electronic), to:

Director, Division of Environmental Remediation
N.Y. State Department of Environmental Conservation
625 Broadway, 12th Floor
Albany, New York 12233-7011
Attention: Newtown Creek Superfund Site Project Manager

47. Emergency Response and Notification of Releases.

a. In the event of any action or occurrence caused by or otherwise resulting from the performance of Work by Respondent that results in a release or threat of release of Waste Material from the Study Area that constitutes an emergency situation or which may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate, or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the Chief of the Response and Prevention Branch of the Emergency and Remedial

Response Division of EPA, Region 2, at (732) 321-6656 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, then EPA's costs of such action shall constitute Future Response Costs and Respondent shall reimburse EPA pursuant to Section XVIII (Payment of Response Costs) for the costs of the response action which are not inconsistent with the NCP.

b. In addition, in the event of any release of a hazardous substance from the Study Area, Respondent shall immediately notify the National Response Center at (800) 424-8802 as well as any one or more of the EPA Project Coordinators or, in the event of his/her unavailability, the Chief of the Special Projects Branch currently at 212-637-4404. Respondent shall submit a written report to EPA within seven days after any such release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release.

c. This foregoing reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

X. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

48. After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement, EPA shall notify Respondent in writing that it either: (a) approves, in whole or in part, the submission; (b) approves the submission with specified conditions; (c) modifies the submission to cure the deficiencies; (d) disapproves, in whole or in part, the submission, directing that Respondent modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Respondent at least one written notice of deficiency and an opportunity to cure within 21 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved because of material defects. EPA may, in its sole discretion, grant greater than 21 days to cure if Respondent requests additional time or if EPA determines that more time is necessary for Respondent to cure the deficiencies.

49. In the event of approval, approval with conditions, and/or modification by EPA, pursuant to Paragraph 48.a, 48.b, 48.c, or 48.e, Respondent shall proceed to take any action required by the plan, report, or other deliverable, as approved or modified by EPA subject only to its right to invoke the Dispute Resolution procedures set forth in Section XV (Dispute Resolution) with respect to the modifications or conditions made by EPA. Following EPA's written approval or modification of a submission or portion thereof, Respondent shall not thereafter alter or amend such submission or portion thereof unless directed by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 48.c and the submission had a material defect, EPA retains the right to seek stipulated penalties, as provided in Section XVI (Stipulated Penalties).

50. Resubmission.

a. Upon receipt of a notice of disapproval, Respondent shall, within thirty days or such longer time as specified by EPA in such notice, correct the deficiencies and resubmit the plan, report, or other deliverable for approval. Any stipulated penalties applicable to the submission, as provided in Section XVI (Stipulated Penalties), shall accrue during the 30-day or otherwise specified period but shall not be payable unless the resubmission is disapproved or modified because of a material defect as provided in Paragraphs 51 and 52.

b. Notwithstanding the receipt of a notice of disapproval, Respondent shall proceed to take any action required by any non-deficient portion of the submission to the extent that to do so would not create inconsistencies related to the deficiency or unless otherwise directed by EPA. Implementation of any non-deficient portion of a submission shall not relieve Respondent of any liability for stipulated penalties under Section XVI (Stipulated Penalties).

c. Respondent shall not proceed further with subsequent activities or tasks until receiving EPA approval, approval on condition, or modification of the FFS Work Plan. While awaiting EPA approval, approval on condition, or modification of such deliverables, Respondent shall proceed with all other tasks and activities that may be conducted independently of these deliverables, in accordance with the schedule set forth in the FFS Work Plan or as otherwise approved by EPA.

d. For all remaining deliverables not coming under Paragraph 50.c., above, Respondent shall proceed with all subsequent tasks, activities, and deliverables without awaiting EPA approval on a submitted deliverable. EPA reserves its right to stop Respondent from proceeding further, either temporarily or permanently, on any task, activity, or deliverable at any point during the FFS, and Respondent agrees to cease any task, activity or deliverable if so directed by EPA.

51. If EPA disapproves a resubmitted plan, report, or other deliverable, or portion thereof, EPA may again direct Respondent to correct the deficiencies. EPA shall also retain the right to modify or develop the plan, report, or other deliverable. Respondent shall implement any such plan, report, or deliverable as corrected, modified, or developed by EPA, subject only to Respondent's right to invoke the procedures set forth in Section XV (Dispute Resolution).

52. If upon resubmission, a plan, report, or other deliverable is disapproved or modified by EPA because of a material defect, Respondent shall be deemed to have failed to submit such plan, report, or other deliverable timely and adequately unless Respondent invokes the dispute resolution procedures in accordance with Section XV (Dispute Resolution) and EPA's action is revoked or substantially modified pursuant to a dispute resolution decision issued by EPA or superseded by an agreement reached pursuant to that Section. The provisions of Section XV (Dispute Resolution) and Section XVI (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is not otherwise revoked, substantially modified, or superseded as a result of a decision or agreement reached pursuant to the dispute resolution process set forth in Section XV, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XVI.

53. In the event that EPA takes over some of the tasks, but not the preparation of FFS Report, Respondent shall incorporate and integrate information supplied by EPA into the FFS Report.

54. All plans, reports, and other deliverables submitted to EPA under this Settlement Agreement shall, upon approval or modification by EPA, be incorporated into and enforceable under this Settlement Agreement. In the event EPA approves or modifies a portion of a plan, report, or other deliverable submitted to EPA under this Settlement Agreement, the approved or modified portion shall be incorporated into and enforceable under this Settlement Agreement.

55. Neither failure of EPA to expressly approve or disapprove of Respondent's submissions within a specified time period nor the absence of comments shall be construed as approval by EPA. Respondent is responsible for preparing deliverables acceptable to EPA.

XI. QUALITY ASSURANCE, SAMPLING, AND ACCESS TO INFORMATION

56. Quality Assurance. Respondent shall assure that Work performed, samples taken, if needed, and analyses conducted conform to the requirements of the FFS Work Plan, the EPA-approved Quality Assurance Project Plan ("QAPP") approved under the 2011 AOC, and guidance identified therein. Respondent shall assure that field personnel retained by Respondent are properly trained in the use of field equipment and in chain of custody procedures. Respondent shall only use laboratories that have a documented quality system that complies with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002, March 2001, reissued May 2006) or equivalent documentation as determined by EPA.

57. Sampling if Needed for Performance of the Work.

a. All results of sampling, tests, modeling, or other data (including raw data) generated by Respondent, or on Respondent's behalf, during the performance of the Work required under this Settlement Agreement shall be submitted to EPA in the next monthly progress report after they are generated as described in Paragraph 45 of this Settlement Agreement. EPA will make available to Respondent any validated data generated by EPA, as well as all QA/QC data, unless it is exempt from disclosure by any federal or state law or regulation.

b. Respondent shall verbally notify EPA at least 14 days prior to conducting significant field events as described in the FFS Work Plan or, if sampling is needed for the FFS, the Sampling and Analysis Plan, provided, however, for any sampling events during wet weather/storm flows or tides, Respondent shall verbally notify EPA as soon as practicable, but not less than one Working Day prior to such sampling event. At EPA's verbal or written request, or the request of EPA's oversight assistant, Respondent shall allow split or duplicate samples to be taken by EPA (and its authorized representatives) of any samples collected in implementing the Work under this Settlement Agreement. All split samples analyzed by EPA shall be analyzed by the methods identified in the QAPP.

c. Circumstances permitting, EPA shall verbally notify Respondent at least 14 days prior to conducting significant field events relating to the Work under this Settlement agreement in the Study Area, other than emergency response actions, activities conducted pursuant to Paragraph 89 (Work Takeover), or any enforcement-related events that require confidentiality. At Respondent's verbal or written request, EPA shall allow split or duplicate samples to be taken by Respondent (and its authorized representatives) of any samples collected in overseeing this Settlement Agreement or otherwise investigating the Site. All split samples shall be analyzed by the methods identified in the QAPP.

d. If Respondent has an obligation under any other regulatory program or otherwise independently compiles information that results in (i) any reports relating to Waste Materials in the Study Area, (ii) any reports relating to Waste Materials from direct or indirect discharges into the Study Area, or (iii) any other reports relating to the Study Area or related to direct or indirect discharges into the Study Area, it shall provide a copy to EPA upon request of such reports.

58. Access to Information.

a. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to implementing the FFS Work Plan or additional Work as required hereunder at the Site or to the implementation of the Work under this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also, to the extent allowed by law, make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

b. Respondent may assert business confidentiality claims covering all or part of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when it is submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent. Respondent shall segregate and clearly identify all documents or information submitted under this Settlement Agreement for which Respondent assert business confidentiality claims.

c. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent assert such a privilege in lieu of providing

documents, it shall provide EPA with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Respondent. However, no documents, reports, or other information required to be created or generated by this Settlement Agreement shall be withheld on the grounds that they are privileged, provided that Respondent may assert such privileges with respect to internal draft documents that have not been disclosed to persons other than Respondent, its counsel, contractors, or agents.

d. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site to the extent that EPA or Respondent believes that such data relates to the Study Area.

59. In entering into this Settlement Agreement, Respondent agrees not to object to incorporating existing, pertinent data generated under EPA-approved work plans and QAPPs under the 2011 AOC in the FFS, if so directed by EPA. Consistent with the SOW, Respondent may seek to incorporate data from the Newtown Creek LTCP in the FFS. If Respondent proposes any other data relating to the FFS, Respondent shall submit to EPA a report that specifically identifies and explains the reason for proposing the data and the added benefit from its inclusion, describes the acceptable uses of the proposed data, and identifies any limitations to the use of such data. Such report must be submitted to EPA within 15 days of the monthly progress report containing the proposed data.

XII. SITE ACCESS

60. If any portion of the Study Area or Site, or any other property where access is needed to implement the Work under this Settlement Agreement, is owned or controlled by Respondent, then Respondent shall, commencing on the Effective Date, provide EPA and the State, and their respective representatives, including contractors, with access at all reasonable times to such property, including without limitation, any vessels, where Respondent is conducting any Work, for the purpose of conducting or overseeing any activity related to this Settlement Agreement.

61. Access to Areas Not Owned by Respondent.

a. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements from the present owners within 45 days of the later of (i) the Effective Date of this Settlement Agreement, or (ii) the date as it is determined by the EPA Project Manager that access to such other properties is needed for performance of Work. Respondent shall immediately notify EPA if, after using best efforts, it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access, unless EPA has

identified the property owner as a PRP under CERCLA in connection with the Study Area. Respondent shall describe in writing its efforts to obtain access. If Respondent cannot obtain access agreements, EPA may either (i) obtain access for Respondent or assist Respondent in gaining access, to the extent necessary to implement the Work described in this Settlement Agreement, using such means as EPA deems appropriate; or (ii) perform those tasks or activities with EPA contractors. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XVIII (Payment of Response Costs). If EPA performs those tasks or activities with EPA contractors and does not terminate this Settlement Agreement, Respondent shall perform all other tasks or activities not requiring access to that property, and Respondent shall reimburse EPA for all costs incurred in performing such tasks or activities. Respondent shall integrate the results of any such tasks or activities undertaken by EPA into its plans, reports and other deliverables.

62. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. COMPLIANCE WITH OTHER LAWS

63. Respondent shall comply with all applicable local, state, and federal laws and regulations when performing the FFS. No local, state, or federal permit shall be required for any portion of any action conducted entirely on-site if the action is selected and carried out in compliance with CERCLA and the NCP, provided that Respondent shall comply with the substantive requirements that would otherwise be included in such permits. Where any portion of the Work is to be conducted off-site and requires a federal, state, or local permit or approval, Respondent shall submit timely and complete applications and take all other actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVII (Force Majeure) of this Settlement Agreement for any delay in performing the Work because of a failure to obtain, or a delay in obtaining, any permit required for the Work, provided that Respondent has made proper, timely, and complete application for such permit and has taken all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIV. RETENTION OF RECORDS

64. During the performance of the Work required under this this Settlement Agreement and for a minimum of 10 years after the FFS is approved by EPA, Respondent shall preserve and retain all non-identical copies of documents, records, and other information (including documents, records, or other information in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Study Area, regardless of any

corporate or governmental retention policy to the contrary. Respondent shall also instruct its contractors and agents to preserve all documents, records, and other information of whatever kind, nature, or description relating to performance of the Work until 10 years after approval of the FFS by EPA.

65. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such documents, records, or other information, and, upon request by EPA, Respondent shall deliver any such documents, records, or other information to EPA. Respondent may assert that certain documents, records, and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, it shall provide EPA with the information set forth in Paragraph 58. c (1)-(6). Except as otherwise provided in Paragraph 58.c., no documents, records, or other information required to be created or generated pursuant to this Settlement Agreement shall be withheld on the grounds that they are privileged.

66. Respondent hereby certifies that, to the best of its knowledge and belief and, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to its potential liability regarding the Study Area since its notification of potential liability by EPA regarding the Site, and it further certifies that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XV. DISPUTE RESOLUTION

67. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

68. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, it shall notify EPA in writing of its objection(s) within 14 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 30 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Such extension may be granted verbally but must be confirmed in writing.

69. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, the Chief of the Special Projects Branch of the Emergency and Remedial Response Division, EPA Region 2, will issue a written decision. When feasible, Respondent shall be given an opportunity to meet with the Chief of the Special Projects Branch of the Emergency and Remedial Response Division, EPA Region 2, before the decision on the dispute is made. The

administrative record of the dispute shall be maintained by EPA and will include all correspondence and material exchanged between EPA and Respondent during the dispute resolution process. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs, and regardless of whether Respondent agrees with the decision.

XVI. STIPULATED PENALTIES

70. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 71.a and 71.b for failure to comply with any of the requirements of this Settlement Agreement as specified below unless excused by EPA under Section XVII (Force Majeure) or otherwise. "Compliance" by Respondent shall include completion of the Work required under this Settlement Agreement including any activities contemplated under any FFS Work Plan or other plan approved under this Settlement Agreement, in accordance with all applicable requirements of law, this Settlement Agreement, the FFS Work Plan, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

71. Stipulated Penalty Amounts

a. The following stipulated penalties shall accrue per day for any non-compliance identified in this subparagraph 71.a:

Penalty Per Violation Per Day	Period of Noncompliance
$1,500	1st through 14th day
$3,000	15th through 30th day
$6,000	31st day and beyond

Stipulated penalties as specified in this subparagraph 71.a shall accrue per violation per day if Respondent fails to timely submit the following major deliverables required under the FFS Work Plan: The FFS Work Plan to be developed pursuant to the Statement of Work (and including all additional work plans to be developed after the Effective Date pursuant to the FFS Work Plan), and the FFS Report.

These major deliverables shall be completed and submitted by Respondent in accordance with the FFS Work Plan and any schedules approved by EPA for delivery of submittals.

b. For all other violations of this Settlement Agreement, including, without limitation, Respondent's failure to provide timely or adequate certificates of insurance pursuant to Paragraph 103, failure to submit periodic progress reports required under Paragraph 45, or failure to timely pay Future Response Costs in accordance with Section XVIII, stipulated penalties shall accrue per violation per day as follows:

Penalty Per Violation Per Day	Period of Noncompliance
$ 750	1st through 14th day
$ 1,500	15th through 30th day
$ 3,000	31st day and beyond

72. In the event that EPA assumes performance of all or a substantial portion of the Work pursuant to Paragraph 89 of Section XX (Reservation of Rights by EPA), Respondent shall be liable for a stipulated penalty in the amount of $100,000. EPA agrees that any such penalty assessed against Respondent under this Paragraph shall be reduced by the percentage of Work completed by Respondent as of the time of the assessment. This Paragraph shall not apply to circumstances described in Paragraph 61.b in which EPA performs work because Respondent is unable to obtain access.

73. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and they shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section X (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and (2) with respect to a decision by the Chief of the Special Projects Branch as provided by Paragraph 69 of Section XV (Dispute Resolution), during the period, if any, beginning on the 31st day after the Negotiation Period begins until the date that the Chief of the Special Projects Branch issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

74. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may provide Respondent with written notification of the same and describe the noncompliance. EPA may send Respondent a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

75. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XV (Dispute Resolution). All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by Fedwire Electronic Funds Transfer in the manner set forth in Paragraph 83.b, below.

76. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

77. Penalties shall continue to accrue as provided in Paragraph 73 during any dispute resolution period, but if Respondent is unsuccessful in the dispute, any penalties need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

78. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 75.

79. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(*l*) of CERCLA, 42 U.S.C. § 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). However, EPA shall not seek civil penalties pursuant to Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement Agreement, except in the case of willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX (Reservation of Rights by EPA), Paragraph 89. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XVII. FORCE MAJEURE

80. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure* event For purposes of this Settlement Agreement, a *force majeure* event is defined as any event arising from causes beyond the control of Respondent or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, that delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. A *Force majeure* event does not include financial inability to complete the Work or increased cost of performance.

81. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify an EPA Project Coordinator (or, in the absence of the EPA Project Coordinators, the Chief of the Special Projects Branch of the Emergency and Remedial Response Division of EPA Region 2 currently at (212) 637-4404) within two Working Days of when Respondent or its agents, contractors, or representatives knew or should have known that the event might cause a delay. Within ten Working Days thereafter, Respondent shall provide to EPA in writing the following: an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for

implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if it intends to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of a *force majeure* event for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

82. If EPA agrees that the delay or anticipated delay is attributable to *a force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by or attributable to a *force majeure* event, EPA will notify Respondent in writing of its decision.

XVIII. PAYMENT OF FUTURE RESPONSE COSTS

83. Payments of Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORPIOS Report, which includes direct and indirect costs incurred by EPA and its contractors, and, as applicable, a DOJ Cost Report, which includes costs incurred by DOJ and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 83 of this Settlement Agreement, and payment shall be made in the manner set forth in Paragraph 83.b.

b. Payments shall be made to EPA by Fedwire Electronic Funds Transfer to:

Federal Reserve Bank of New York
ABA: 021030004
Account: 68010727
SWIFT address: FRNYUS33
Street Address: 33 Liberty Street, New York NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"
Amount: [Specify the amount of the payment]
Respondent's Name: City of New York
EPA Index Number: CERCLA-02-2018-2020
Site/spill identifier: A206

At the time of payment, Respondent shall send notice that such payment has been made by email to EPA's accounts receivable office and to EPA's Project Coordinators and Site Attorney currently at the following email addresses:
cinwd_acctsreceivable@epa.gov
henderson.jessica@epa.gov
kwan.caroline@epa.gov
schmidt.mark@epa.gov
rosenblatt.anne@epa.gov
mintzer.michael@epa.gov

The total amount to be paid by Respondent pursuant to subparagraph 83.a. and Paragraph 84 shall be deposited in the Newtown Creek Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund

84. If Respondent fails to pay Future Response Costs within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance of Future Response Costs. The Interest on unpaid Future Response Costs shall begin to accrue on the Effective Date or on the date of the bill, as applicable, and shall continue to accrue until the date of payment. If EPA receives a partial payment, Interest shall accrue on any unpaid balance. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to payments of stipulated penalties pursuant to Section XVI. Respondent shall make all payments required under this Paragraph in the manner described in Paragraph 83.b.

85. Respondent may contest payment of any Future Response Costs under Paragraph 83 if it asserts that EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision of this Settlement Agreement or specific provisions of the NCP. Such objection shall be made in writing within 60 days of receipt of the bill and must be sent to the EPA Project Coordinators. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 83. Simultaneously, Respondent shall establish, through the Office of the Comptroller of the City of New York, an interest-bearing Trust and Agency Account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation, and it shall remit to that account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA Project Coordinators a copy of the transmittal letter and check paying the uncontested Future Response Costs and a copy of the correspondence that establishes and funds and documents the deposit into the account, including, but not limited to, information containing the identity of the bank and bank account under which the account is established as well as a bank statement showing the

initial balance of the account. In such an instance, simultaneously with establishment of the account, Respondent shall initiate the Dispute Resolution procedures in Section XV (Dispute Resolution). If EPA prevails in the dispute, within five days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 83. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to EPA in the manner described in Paragraph 83. Respondent shall be disbursed any balance of the account remaining thereafter. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to pay EPA for its Future Response Costs.

XIX. COVENANT NOT TO SUE BY EPA

86. In consideration of the actions that will be performed and the payments that will be made by Respondent under this Settlement Agreement, and except as provided in Section XX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement Agreement. These covenants extend only to Respondent and do not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

87. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants, or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

88. The covenant not to sue set forth in Section XIX, above, does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. liability for failure by Respondent to meet a requirement of this Settlement Agreement;
b. liability for response costs not included within the definition of Future

Response Costs;

c. liability for performance of response activities other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the cost of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release, or threat of release of Waste Materials outside of the Study Area;

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Study Area not paid as Future Response Costs under this Settlement Agreement.

89. Work Takeover.

a. In the event that EPA determines that Respondent has (i) ceased implementation of any portion of the Work, (ii) is seriously or repeatedly deficient or late in its performance of the Work, or (iii) is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by EPA will specify the grounds upon which such notice was issued and will provide Respondent a period of 21 days within which to remedy the circumstances giving rise to EPA's issuance of such notice.

b. If, after expiration of the 21-day notice period specified in Paragraph 89.a, Respondent has not remedied to EPA's satisfaction the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice, EPA may at any time thereafter assume the performance of all or any portions of the Work as EPA deems necessary ("Work Takeover"). EPA shall notify Respondent in writing if EPA determines that implementation of a Work Takeover is warranted under this subparagraph 89.b.

c. Respondent may invoke the procedures set forth in Section XV (Dispute Resolution) to dispute EPA's implementation of a Work Takeover under subparagraph 89.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 89.b until the earlier of (i) the date that Respondent remedies, to EPA's satisfaction, the circumstances giving rise to EPA's issuance of the relevant Work Takeover Notice or (ii) the date that a final decision is rendered in accordance with Section XV (Dispute Resolution) that requires EPA to terminate such Work Takeover.

XXI. RESERVATION OF RIGHTS BY RESPONDENT

90. Except as otherwise provided in this Settlement Agreement, Respondent expressly reserves all rights and affirmative defenses under statute, including CERCLA, or common law.

XXII. COVENANT NOT TO SUE BY RESPONDENT

91. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of the Work or arising out of the response actions for which the Future Response Costs have been or will be incurred, respectively, including any claim under the United States Constitution, the New York State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Future Response Costs provided, however, that this Settlement Agreement shall not have any effect on claims or causes of action in contribution that Respondent has or may have pursuant to CERCLA against the United States or any of its agencies or departments, other than EPA, as a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Site.

92. Except as expressly provided in Paragraph 94 (*De Minimis*/Ability to Pay Waivers) of this Section XXII (Covenant Not to Sue by Respondent), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section XX (Reservations of Rights by EPA), other than in Paragraph 88.a (claims for failure to meet a requirement of this Settlement Agreement) or 88.d (criminal liability), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the above-referenced applicable reservation.

93. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. Section 300.700(d).

94. *De Minimis*/Ability to Pay Waivers. Respondent agrees not to assert any claims and agrees to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) or 113 of CERCLA) that it may have for all matters relating to the Site against any person who has settled with EPA, or who hereafter settles with EPA with respect to the Site, in a final Section 122(g) *de minimis* settlement or a final settlement based on such person's limited ability to pay, as of the Effective Date. This waiver shall not apply with respect to any defense, claim, or cause of action that Respondent may have against any person if such person asserts a claim or cause of action relating to the Site against Respondent.

XXIII. OTHER CLAIMS

95. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent.

96. Except as expressly provided in Section XXII (Covenant Not to Sue by Respondent), Paragraph 94 (*De Minimis*/Ability to Pay Waivers), and Section XIX (Covenants by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any other person not a Party to this Settlement Agreement for any liability such other person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

97. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIV. CONTRIBUTION PROTECTION

98. Contribution Protection.

a. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Future Response Costs. Notwithstanding such protections against contribution actions or claims by non-parties to this Settlement Agreement, Respondent may allocate or reallocate any and all response costs incurred in connection with this Settlement Agreement among any person not a Party to this Settlement Agreement.

b. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §

9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved its liability to the United States for the Work and Future Response Costs.

c. Except as provided in Section XXII (Covenant Not to Sue by Respondent), Paragraph 94 (*De Minimis*/Ability to Pay Waivers), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Paragraph 94 (*De Minimis*/Ability to Pay Waivers), Respondent and EPA expressly reserve any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that each may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2) and (3), to pursue any such other persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

99. Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to the initiation of such suit or claim. Respondent also shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within ten Working Days of service of the complaint or claim upon it. In addition, for matters related to this Settlement Agreement, Respondent shall notify EPA within ten Working Days of service or receipt of any Motion for Summary Judgment and within ten Working Days of receipt of any order from a court setting a case for trial.

XXV. INDEMNIFICATION

100. Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys' fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its municipal officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

101. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

102. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work at or relating to the Study Area.

XXVI. INSURANCE

103. Respondent is self-insured and represents that it has and shall maintain adequate insurance coverage or indemnification for liabilities for injuries or damages to persons or property that may result from the activities to be conducted by or on behalf of Respondent pursuant to this Settlement Agreement. For the duration of the performance of the Work under this Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent under this Settlement Agreement.

XXVII. FINANCIAL ASSURANCE

104. Financial Security Mechanism and Documents.

a. Within 30 days of the Effective Date, or such other date as agreed to by EPA, Respondent shall establish and maintain financial security for the benefit of EPA in the amount of $330,000 in the following form in order to secure the full and final completion of Work by Respondent: a demonstration of sufficient financial resources to pay for the Work made by Respondent, which shall consist of a demonstration that Respondent satisfies the requirements of 40 C.F.R. Part 258.74(f).

b. The financial security mechanism or other documents consistent with the requirements in Paragraph 104.a, and each annual resubmission required by Paragraph 106 of this Settlement Agreement shall be sent to Chief, Resource Management/Cost Recovery Section, Emergency and Remedial Response Division, U.S. EPA Region 2, 290 Broadway, 18th Floor, New York, NY 10007-1866. Respondent shall send copies by email to Chief, Resource Management/Cost Recovery Section, Emergency and Remedial Response Division, currently at Keating.Robert@epa.gov, and additional copies by email to EPA's Project Coordinators and Site Attorney, currently at: kwan.caroline@epa.gov; schmidt.mark@epa.gov; rosenblatt.anne@epa.gov; and mintzer.michael@epa.gov.

105. Any financial assurance instruments provided pursuant to this Section shall be in form and substance satisfactory to EPA, determined in EPA's sole discretion. In addition, if at any

time EPA notifies Respondent that the anticipated cost of completing the Work has increased, then, within 30 days of such notification, Respondent shall obtain and present to EPA for approval a revised form of financial assurance (otherwise acceptable under this Section) that reflects such cost increase. Respondent's inability to demonstrate financial ability to complete the Work shall in no way excuse performance of any activities required under this Settlement Agreement.

106. Respondent shall resubmit to EPA the demonstration by 40 C.F.R. Part 258.74 (f) annually, on the anniversary of the Effective Date, or such other date as agreed to by EPA. For the purposes of this Settlement Agreement, wherever 40 C.F.R. Part 264.143(f) references "sum of current closure and post-closure costs estimates and the current plugging and abandonment costs estimates", the dollar amount to be used in the relevant financial test calculations shall be the current cost estimate of $330,000 for the Work at the Study Area plus any other RCRA, CERCLA, TSCA, or other federal environmental obligations financially assured by the relevant Respondent or guarantor to EPA by means of passing a financial test.

107. If, after the Effective Date, Respondent can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 104 of this Section, Respondent may, on any anniversary date of the Effective Date, or at any other time agreed to by the Parties, request that the amount of the financial security provided under this Section be reduced to the estimated cost of the remaining Work to be performed. Respondent shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security after receiving written approval from EPA. In the event of a dispute, Respondent may seek dispute resolution pursuant to Section XV (Dispute Resolution). Respondent may reduce the amount of security by agreement among the Parties resolving the dispute or, failing such agreement, by EPA's written decision resolving the dispute.

108. Respondent may change the form of financial assurance provided under this Section at any time, upon notice to and prior written approval by EPA, provided that EPA determines that the new form of assurance meets the requirements of this Section. In the event of a dispute, Respondent may change the form of the financial assurance only in accordance with an agreement among the Parties resolving the dispute or, failing such agreement, EPA's written decision resolving the dispute.

XXVIII. INTEGRATION/APPENDICES

109. This Settlement Agreement and its appendices and any deliverables, technical memoranda, specifications, schedules, documents, plans, reports (other than progress reports), etc. that will be developed pursuant to this Settlement Agreement and become incorporated into and enforceable under this Settlement Agreement constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement and its appendices:

"Appendix A" is a map generally depicting the Study Area.
"Appendix B" is the Statement of Work

XXIX. ADMINISTRATIVE RECORD

110. EPA will, pursuant to CERCLA and the NCP, determine the contents of the administrative record file for selection of any remedial action. Respondent shall submit to EPA documents developed during the course of the FFS upon which selection of a response action may be based. Upon request of EPA, Respondent shall provide copies of documents necessary to support a decision regarding any future response necessary at the Study Area, including but not limited to plans, task memoranda for further action, quality assurance memoranda and audits, laboratory analytical reports, and other reports. Upon request of EPA, Respondent shall additionally submit any previous studies conducted under state, local or other federal authorities relating to selection of a response action as well as all communications between Respondent and state, local or other federal authorities concerning selection of a response action. At EPA's discretion, Respondent shall establish a community information repository at or near the Study Area to house one copy of the administrative record.

XXX. EFFECTIVE DATE AND SUBSEQUENT MODIFICATION

111. This Settlement Agreement shall be effective upon receipt by Respondent after it has been executed by the duly designated representatives of the Parties.

112. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless the relevant document is formally modified. The EPA Project Coordinator may extend any deadline under this Settlement Agreement, provided that any such extension shall be in writing (which may include electronic mail).

XXXII. NOTICE OF COMPLETION OF WORK

113. If Respondent believes that all Work and all other activities have been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations such as Respondent's obligation to retain records pursuant to Section XIV of this Settlement Agreement, Respondent may request that EPA provide it with written notice of completion of the Work. Upon receipt of such a request, EPA will either provide written notice of completion to Respondent indicating that the Work required pursuant to this Settlement Agreement has been completed and Respondent's obligations hereunder have been satisfied, subject to any continuing obligations, or, if EPA determines that any Work has not been completed in accordance with this Settlement Agreement, EPA will so notify Respondent, provide a list of the deficiencies, and

require that Respondent correct such deficiencies. Failure by Respondent to correct such deficiencies shall be a violation of this Settlement Agreement.

It is so ORDERED AND AGREED this 20th day of December, 2018.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: _____ Date: December 20, 2018

For Angela B. Carpenter, Acting Director
Emergency and Remedial Response Division
United States Environmental Protection Agency
Region 2

In the Matter of the Newtown Creek Superfund Site
Administrative Settlement Agreement and Order on Consent for Focused Feasibility Study,
CERCLA Docket No. CERCLA-02-2018-2020

FOR RESPONDENT CITY OF NEW YORK

_____ _____

Signature Date

_____

Printed Name

_____

Title

In the Matter of the Newtown Creek Superfund Site
Administrative Settlement Agreement and Order on Consent for Focused Feasibility Study,
CERCLA Docket No. CERCLA-02-2018-2020

FOR RESPONDENT CITY OF NEW YORK

Signature

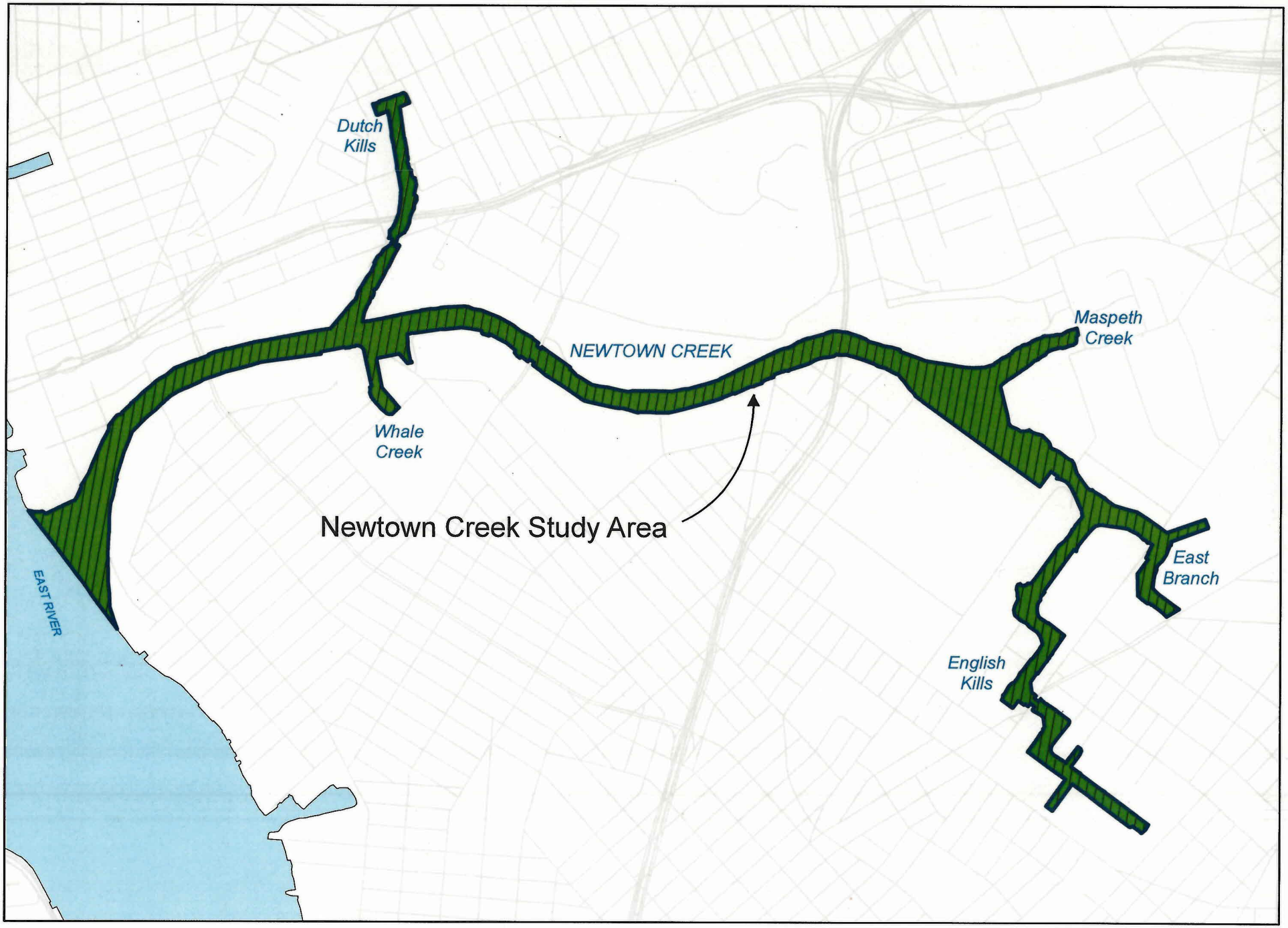
12/14/18
Date

Vincent Sapienza
Printed Name

Commissioner
Title

Appendix A
To Administrative Settlement Agreement and Order on Consent for Focused Feasibility Study,
CERCLA Docket No. CERCLA-02-2018-2020

Map Generally Depicting the Study Area



J:\Indl_Service\Project Files\Newtown Creek\10.0 Data\GIS\Projects\Work Plan February 15\Figure 1.mxd

ECOM

0 1,000 Feet

Source:
ESRI 9.3 Streetmap Data Layer.

Appendix B
Newtown Creek Study Area

Appendix B
To Administrative Settlement Agreement and Order on Consent for Focused Feasibility Study,
CERCLA Docket No. CERCLA-02-2018-2020

Statement of Work

Appendix B
Statement of Work – OU2 Focused Feasibility Study

I. WORK TO BE PERFORMED

This statement of work (SOW) shall mean the statement of work for the preparation of a Focused Feasibility Study (FFS), and related documentation, for Operable Unit 2 (OU2) of the Newtown Creek Superfund Site (Site), located in Kings County and Queens County, New York City, New York. OU2 relates specifically to current and reasonably anticipated future releases of CERCLA Hazardous Substances (hazardous substances) from combined sewer overflow (CSO) discharges to the Study Area. The definition of OU2 does not include past (historic) releases from CSO discharges to the Site. The terms "Study Area" and "Site" are defined in the previously executed Administrative Settlement Agreement and Order on Consent for the Newtown Creek remedial investigation and feasibility study (RI/FS), U.S. EPA Region II, CERCLA Docket No. CERCLA-02-2011-2011, signed by EPA on July 7, 2011 (2011 AOC).

This SOW is incorporated into and becomes a part of the Administrative Settlement Agreement and Order on Consent, Index Number CERCLA-02-2018-2020, for OU2 of the Site (2018 AOC), and it is an enforceable part of the 2018 AOC. The respondent to the 2018 AOC, the City of New York (hereinafter, Respondent), shall perform the Work as defined herein in accordance with the 2018 AOC and this SOW, including all terms, conditions and schedules set forth herein or developed and approved hereunder. All definitions in the 2018 AOC are incorporated by reference into this SOW.

The Work under the 2018 AOC for OU2 includes, but is not limited to, completion of an FFS to evaluate the impact of releases of hazardous substances, as identified in the baseline human health and ecological risk assessments developed for Study Area, on Newtown Creek from CSO discharges to the Creek. The FFS covered by this SOW similarly evaluates hazardous substances only.

A. The objectives of the Work are to:

1. Summarize the nature and extent of hazardous substances released and anticipated to be released to the Study Area from CSO discharges under current and reasonably anticipated future flow conditions as identified in the Combined Sewer Overflow Long Term Control Plan for Newtown Creek approved by NYSDEC by letter dated June 27, 2018 and as supplemented, pursuant to NYSDEC's direction, on July 31, 2018 (LTCP). For assessing the future chemical loadings from CSO discharges, the chemical concentrations measured pursuant to the RIFS conducted under the 2011 AOC will be used.

2. Evaluate the impacts of current and reasonably anticipated future releases of hazardous substances from CSOs to Newtown Creek. Impacts include those to human health and/or the environment. The impacts will be assessed using multiple lines of evidence, such as comparison of the measured concentrations of hazardous substances released from CSOs to background concentrations, and comparison of the estimated loading of hazardous substances from CSO releases to loadings from other sources. It is anticipated that modeling will be used to assist in assessing these impacts.

3. Develop and evaluate alternatives to address any current and reasonably anticipated future impacts of hazardous substances released through CSO discharges on the Study Area under

flow conditions identified in the LTCP, and develop the documentation required to support the selection of an alternative in a Record of Decision for OU2 of the Site.

B. The FFS shall use existing Site data and reports to prepare the FFS, including:

1. Existing, pertinent data generated under EPA-approved work plans and Quality Assurance Project Plans (QAPPs) under the 2011 AOC.

2. Final Baseline Human Health Risk Assessment developed under the 2011 AOC for the Newtown Creek Site;

3. Final Baseline Ecological Risk Assessment developed under the 2011 AOC for the Newtown Creek Site; and

4. Any pertinent data, models and information included in the NYSDEC-approved LTCP, after EPA review and approval of its use, which approval will be limited to the specific work of preparing this FFS.

In addition, the FFS may rely upon modeling developed for the purpose of conducting this FFS, and using only EPA-approved data, as feasible and appropriate, after EPA review and approval.

II. PROJECT SUPERVISION/MANAGEMENT

A. SELECTION OF CONTRACTORS, PERSONNEL

1. All Work performed under this Settlement Agreement shall be under the direction and supervision of qualified personnel. Respondent has identified, and EPA approves, Louis Berger, P.C. as its contractor for the performance of the Work. If Respondent wishes to change its designated contractor during the performance of the Work, it shall submit to EPA for approval the name and qualifications of a new, proposed designated contractor and of the key personnel, including subcontractors, consultants, and laboratories, to be used in carrying out such Work prior to dismissing the designated contractor. With respect to any new proposed contractor, Respondent shall demonstrate that that proposed contractor has a quality system which complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995, or most recent version), by submitting a copy of the proposed contractor's Quality Management Plan ("QMP"). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)," (EPA/240/B-01/002, March 2001 (Reissued May 2006)) or equivalent documentation as determined by EPA. The qualifications of the key personnel undertaking the Work for Respondent shall be subject to EPA's review, for verification that such persons meet minimum technical background and experience requirements. If EPA disapproves in writing of any key person's technical qualifications, Respondent shall notify EPA of the identity and qualifications of the replacement(s) within 14 days of the written notice. If EPA subsequently disapproves of the replacement, EPA reserves the right to terminate this Settlement Agreement and to conduct a complete FFS, and to seek reimbursement for costs and penalties from Respondent. During the course of the FFS, Respondent shall notify EPA in writing of any changes or additions to the key personnel used to carry out such Work, providing their names, titles, and qualifications. EPA

shall have the same right to disapprove changes and additions to personnel as it has hereunder regarding the initial notification of identified personnel by Respondent.

B. PROJECT COORDINATOR

Respondent's Project Coordinator and Alternate Project Coordinator. Respondent has identified and EPA approves Ron Weissbard as its Project Coordinator. Respondent has identified and EPA approves Dabeiba Marulanda as its Alternate Project Coordinator (for instances when the Project Coordinator is unavailable). The Project Coordinator shall be responsible for administration of all actions by Respondent required under this Settlement Agreement. If Respondent wishes to change its Project Coordinator or Alternate Project Coordinator, it shall submit to EPA the name, address, telephone number, and qualifications of a new, proposed Project Coordinator and/or Alternate Project Coordinator for approval prior to dismissing the Project Coordinator and/or Alternate Project Coordinator. The proposed Project Coordinator and Alternate Project Coordinator shall not be an attorney for Respondent. EPA retains the right to disapprove of the proposed Project Coordinator or Alternate Project Coordinator. If EPA disapproves of a proposed Project Coordinator or Alternate Project Coordinator, Respondent shall submit to EPA for approval a different proposed Project Coordinator or Alternate Project Coordinator and shall notify EPA of that person's name, address, telephone number and qualifications within 14 days following EPA's disapproval. After approval, receipt by Respondent's Project Coordinator or Alternate Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by Respondent.

III. FFS ACTIVITIES

The Work to be performed in support of the development of the Final FFS Report includes, but is not limited to, the following:

A. Development of an FFS Work Plan to be submitted for review by EPA;

B. Presentation of an evaluation and screening of alternatives to EPA. These alternatives may include, but not necessarily be limited to, no action, no further action (which assumes the LTCP is implemented), and 100% control of CSO discharges to the Creek;

C. Preparation and submission of a Draft FFS Report to EPA; and

D. Preparation and submission of a Final FFS report to EPA.

While not anticipated, if any additional data is determined to be needed to complete the FFS activities, a written request to collect such data shall be made to EPA, and any additional data collection would be subject to EPA approval and should be conducted using previously existing, EPA-approved QAPPs and/or work plans, as possible.

IV. PROJECT DELIVERABLES

As set forth in the 2018 AOC, the Respondent is required to submit project deliverables to EPA, including, but not limited to:

A. FFS Work Plan

Within thirty (30) days of the effective date of the 2018 AOC, the Respondent shall submit to EPA a Draft FFS Work Plan, including a supplemental draft Community Involvement Plan. Within fourteen (14) days of receiving EPA comments on the Draft FFS Work Plan, or as otherwise agreed by EPA, the Respondent shall submit a Final FFS Work Plan to EPA for approval pursuant to Section X (EPA Approval of Plans and Other Submissions) of the 2018 AOC, unless the Respondent is directed otherwise by EPA in writing.

B. Evaluation and Screening of Remedial Alternatives Presentation

Within twenty-one (21) days of receipt of EPA approval of the FFS Work Plan or as otherwise agreed to by EPA, the Respondent shall provide EPA with a Technology Evaluation and Screening of Alternatives Presentation. This presentation shall include the development of draft Remedial Action Objectives for OU2.

C. FFS Report

Within thirty (30) days of the receipt of EPA comments on the Technology Evaluation and Screening of Remedial Alternatives Presentation or as otherwise agreed to by EPA, the Respondent shall submit a Draft FFS Report to EPA. Within fourteen (14) days of receiving EPA comments on the Draft FFS Report or as otherwise agreed to by EPA, the Respondent shall submit a Final FFS Report to EPA for approval pursuant to Section X (EPA Approval of Plans and Other Submissions) of the 2018 AOC, unless the Respondent is directed otherwise by EPA in writing. Upon approval by EPA, the FFS Report shall be deemed incorporated into the 2018 AOC by reference.

The FFS Reports shall accomplish the following:

1. Summarize FFS Objectives;
2. Summarize Remedial Action Objectives;
3. Summarize the ecological and human health risks to justify, as appropriate, the need for response action;
4. Summarize general response actions;
5. Summarize the screening of alternatives;
6. Provide alternatives description;
7. Provide a detailed analysis and cost of remedial alternatives evaluated in the FFS;
8. Present a summary and conclusion

The Respondent's technical feasibility considerations shall follow the criteria established in the National Contingency Plan (NCP), including a careful study of any circumstances that may prevent an alternative from accomplishing the Remedial Action Objectives. Consistent with the NCP, the Site characteristics must be considered as the technical feasibility of each alternative is evaluated.

Specific items to be addressed include reliability (operation over time), safety, operation and maintenance, ease with which the alternative can be implemented, and time needed for implementation. The FFS shall include appropriate models and/or calculations that provide technical support for evaluation of the current and reasonably anticipated future impacts of hazardous substances from CSO releases on Newtown Creek under the remedial alternatives evaluated in the FFS.

V. MONTHLY PROGESS REPORTS

In addition to the other deliverables set forth in the 2018 AOC, the Respondent shall provide written monthly progress reports to EPA with respect to actions and activities undertaken pursuant to the 2018 AOC. The progress reports shall be submitted on or before the tenth day of each month following the effective date of the 2018 AOC. The Respondent's obligation to submit progress reports continues until EPA gives the Respondent written notice that it may cease submitting the progress reports as set forth under the 2018 AOC. At a minimum, these progress reports shall include the following:

A. A description of all actions which have been taken toward achieving compliance with the 2018 AOC during the prior month;

B. A description of any violations of the 2018 AOC and other problems encountered during the month;

C. A description of all corrective actions taken in response to any violations or problems which occurred during the prior month;

D. A description of all activities and submittals planned for the following two months;

E. Identification of all data collected or received by Respondent during the prior month;

F. A description of all plans, actions, and data scheduled;

G. An estimate of percentage of the Work required by the 2018 AOC that has been completed as of the date of the progress report;

H. An identification of all delays encountered or anticipated that may affect the future schedule for performance of the Work, and all efforts made by the Respondent to mitigate delays or anticipated delays; and

I. A description of all communications that the Respondent has had with state or federal authorities related to the Work.

VI. COMPLETION OF WORK

If Respondent believes that all Work and all other activities have been fully performed in accordance with the 2018 AOC, with the exception of any continuing obligations such as Respondent's obligation to retain records pursuant to Section XIV of the 2018 AOC, Respondent may request that EPA provide it with written notice of completion of the Work. Upon receipt of such a request, EPA will either provide written notice of completion to Respondent indicating that

the Work required pursuant to this Settlement Agreement has been completed and Respondent's obligations under the 2018 AOC have been satisfied, subject to any continuing obligations, or, if EPA determines that any Work has not been completed in accordance with the 2018 AOC, EPA will so notify Respondent, provide a list of the deficiencies, and require that Respondent correct such deficiencies. Failure by Respondent to correct such deficiencies shall be a violation of the 2018 AOC.